

The Assistant Director found claimant was injured in a work-related automobile accident on April 19, 1995. As a result of that work-related injury, the Assistant Director awarded claimant permanent partial disability benefits based on her functional impairment for the period immediately following the accident when she continued to work for the respondent and permanent partial disability benefits based on the two part work disability test contained in K.S.A. 44-510e for the period after respondent terminated claimant's employment on May 16, 1995. The Assistant Director also found the record proved claimant had a preexisting back condition with a 4 percent permanent impairment of function that was aggravated by the work-related automobile accident. Therefore, pursuant to K.S.A. 44-501(c), the Assistant Director reduced claimant's permanent partial disability benefits by the preexisting 4 percent permanent functional impairment rating.

First, the respondent contends claimant failed to prove she suffered a work-related injury. Second, if the Appeals Board finds claimant proved a work-related injury, then respondent contends the claimant was terminated for cause not related to her injury. Thus, respondent argues the policy considerations announced in the case of Foult v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995) apply and claimant is not entitled to a work disability award.

On the other hand, claimant contends the record failed to prove she had a preexisting back condition that resulted in a 4 percent preexisting impairment of function. The claimant argues K.S.A. 44-501(c) does not apply and the Assistant Director erred in reducing her award of permanent partial disability benefits by 4 percent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds the Assistant Director's Award should be affirmed. Furthermore, the Appeals Board agrees with the Assistant Director's analysis of the evidence as set forth in the Award. The Appeals Board concludes the Assistant Director's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the Assistant Director's findings and conclusions as its own as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Assistant Director Brad E. Avery's December 22, 1997, Award should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael J. Haight, Overland Park, KS
Gary R. Terrill, Overland Park, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director